IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6708 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHUPENDRAKUMAR M KADIA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR NK MAJMUDAR for Petitioner(s) : 1,
Mr. Dipen Desai, Asst. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR LR PUJARI for Respondent(s) : 3,
RULE SERVED for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/03/2007

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed

for an appropriate writ, direction or order quashing and setting aside the action of the respondent authorities in not granting promotion to the petitioner in Class-III service in Cooperative Department. The petitioner has further prayed for a declaration that he is entitled to promotion in Class-II service in Cooperative Department with retrospective effect from the date of promotion of respondent No.4, his immediate junior to Class-II service.

2. It appears from the record that during the pendency of the present Special Civil Application the petitioner was promoted to the post in Class-II service in Cooperative Department and therefore the only question which is required to be considered by this Court is with regard to deemed date of promotion of petitioner to Class-II service.

3. It is the case on behalf of the

petitioner that the case of the petitioner was considered by the State Government and the GPSC along with respondent No.4 and other employees, however the respondent No.4 his immediate junior was promoted but the petitioner was not granted the promotion. On considering the affidavit-in-reply filed on behalf of GPSC it appears considering Para 5 that by letter dated 20th July,1995 the State Government submitted a proposal for promotion to the post of Gujarat Co-operative Service Class-II and in the said proposal the name of the petitioner was at Serial No. 60. On receiving the same vide letter dated 5.8.1995 the Commission wanted some further information and clarification from the Government. It is further submitted that on receiving such information and clarification vide Government letter dated 17.8.1995, 76 officers out of the said list of 88 officers were approved by the Commission vide letter dated 1.1.1996 and from amongst other remaining officers the proposal regarding the petitioner was incomplete as his complete confidential report was not

submitted to the Commission. It is submitted that the Government was informed accordingly as stated in Para 4 of the letter and in the meantime 61 officers out of the said officers in the approved list of Sr. No. 1 to 71 were promoted by the Government vide Notification dated 29.8.1996. In the said notification the respondent No.4 who was the immediate junior to the petitioner was included at Sr. No. 40. Thereafter, the Government once again by submitting incomplete confidential report of the petitioner called for opinion of the Commission. Thereafter vide letter dated 31.12.1996 the Commission requested the Government to submit complete confidential report of the petitioner and it was informed to the Government that only after getting the complete file the Commission will submit its opinion. It is submitted that pursuant thereto vide letter dated 17th March 1997 the Government informed the Commission that since complete confidential report of the petitioner is not available on the basis of available report and also the recommendation made in the

proceedings of the Departmental Promotion Committee considering the same as circumstantial evidence requested the Commission to give its opinion.

3.1. In the aforesaid facts and circumstances of the case, ultimately the Commission vide its letter dated 20.9.1997 gave its approval for including the name of the petitioner in the provisional promotion list dated 4/11.1.1995 of Gujarat Co-operative Service Class-II. Thus, on perusal of the affidavit-in-reply filed on behalf of the Gujarat Public Service Commission it appears that though the case of the petitioner was recommended by the Departmental Promotion Committee and was sent to the GPSC as some documents like Confidential Reports were not available the case of the petitioner was not considered by the GPSC and it was not approved by the GPSC at the relevant time and the immediate junior to the petitioner came to be promoted. It is not the case of the State Government that the

petitioner was in any way responsible for non-availability of the Confidential Reports. Even subsequently the State Government while again recommending the case of the petitioner in the year 1997 vide letter dated 17th March 1997 the State Government itself requested the GPSC to consider the case of the petitioner on the basis of the material available and accordingly the GPSC considered the same. Therefore, when the same set of circumstances was there at the time when the case of the petitioner was considered and when his immediate junior was promoted and at the time when actual promotion was subsequently granted, the same exercise was required to be carried out by the GPSC, i.e., the case of the petitioner was required to be considered on the date on which his immediate junior, i.e., respondent No.4 was promoted. In other words, GPSC was required to consider the case of the petitioner for promotion along with the case of respondent No.4 who was his immediate junior. By not considering the case of the petitioner retrospectively, there is gross injustice caused

to the petitioner.

4. Under these circumstances, the Gujarat Public Service Commission is required to be directed to consider the case of the petitioner for the purpose of fixing deemed date of promotion which should be the date on which his immediate junior, i.e., respondent No.4 was promoted, and if ultimately it is found that the petitioner was eligible for promotion, in that case the petitioner should be granted the said deemed date. The matter is, therefore, remanded to the Gujarat Public Service Commission for completing the aforesaid exercise. The said exercise be completed by the GPSC whin a period of 3 months from the date of receipt of this order and thereafter if ultimately the petitioner is entitled to certain consequential benefits the same should be granted by the State Government within the period of three months thereafter.

5. With these, the present Special Civil

Application is partly allowed. Rule is made absolute to the above extent with no order as to costs.

[M.R. Shah, J.]

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